



# Civil Resolution Tribunal

Date Issued: September 14, 2020

File: SC-2020-004607

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *9305076 Canada Ltd. v. Williams*, 2020 BCCRT 1027

**B E T W E E N :**

9305076 CANADA LTD.

**APPLICANT**

**A N D :**

MICHAEL WILLIAMS also known as MIKE WILLIAMS

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

### **INTRODUCTION**

1. This dispute is about payment for lawn services. The applicant, 9305076 Canada Ltd., which does business as Sprout Landscaping (Sprout), says that the respondent, Michael Williams also known as Mike Williams, failed to pay for moss treatment and power raking that it performed. Sprout claims \$124.95 plus 24% contractual interest.

2. Mr. Williams says that Sprout never performed any lawn services at his home. He says he does not owe Sprout anything.
3. Sprout is represented by an employee or principal. Mr. Williams is self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

8. I note that Mr. Williams filed an item of evidence after the deadline. As Sprout had the opportunity to see and make submissions about the late evidence, and given the CRT's mandate to be flexible, I find the evidence is admissible. Nevertheless, I find the late evidence is not relevant to the issues in this dispute and I have placed no weight on it in coming to my decision.

## **ISSUES**

9. The issue in this dispute is whether Mr. Williams owes Sprout \$124.95 plus contractual interest for lawn services performed.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant, Sprout must prove its claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Mr. Williams says that he called Sprout in February 2018 to request lawn services including power raking and aeration. He says he followed up on March 13, 2018 because nobody had contacted him, and the work had not been completed. On April 13, 2018, Mr. Williams says he was notified by email that Sprout had completed his lawn service. The evidence shows that Mr. Williams immediately responded by email, asking Sprout what work had been completed and when it had been done. His email said that he understood a notice was supposed to be left at his home the day a service is done, and he had not received any notice.
12. On April 18, 2018, Sprout responded to Mr. Williams' email, stating "looks like all services complete" but that a small section would require another power rake, which they would take care of shortly. Mr. Williams responded to Sprout, advising that his lawn had not been moss sprayed and the lawn was not power raked.

13. The following day, Sprout responded to Mr. Williams, advising that a manager had “come by” to confirm the services had been rendered and offered to arrange for someone to walk through and discuss the completed services. Sprout advised Mr. Williams that it would forward its invoice in the coming days.
14. Sprout and Mr. Williams exchanged several emails on April 20 and 21, 2018, with Sprout maintaining that the work had been done and Mr. Williams arguing that he could see no evidence of the service. In one of the emails, Sprout refers to a 100% guarantee of services, which allows Mr. Williams to request a re-service at no charge. Several times, Mr. Williams refused any re-service until he had an opportunity to meet with a manager to discuss the service Sprout claimed it had performed. Mr. Williams provided specific dates and times he was available for a meeting. Sprout did not respond to Mr. Williams’ request for a meeting.
15. On April 24, 2018, Mr. Williams emailed Sprout that he received a notice on his door advising that moss service had been done the day before, contrary to his request for no re-servicing. He asked that Sprout not send anyone to work on his home again. Sprout replied 3 days later, advising that a manager came out to assess Mr. Williams’ lawn, as requested, and re-applied moss spray, so all services were completed, including verification by management. Sprout stated that it looked forward to prompt payment. Mr. Williams denies that Sprout did any moss spray at any time.
16. The evidence shows that Sprout told Mr. Williams that its technician initially completed the moss spray work on April 4, 2018 and then power raked his lawn on April 13, 2018.
17. Sprout provided GPS tracking coordinates of its technician’s April 4, 2018 stops. It shows the technician completed a service about 5 or 6 blocks from Mr. Williams’ home at 5:04 p.m. and completed Mr. Williams’ service by 5:10 p.m. Sprout provided no evidence, such as a statement from the technician, or any submissions about what the moss spray treatment entailed. Nevertheless, I find that to drive 5 or 6 blocks, park a vehicle, and complete any service, given the photographic

evidence of the size of Mr. Williams' lawn, would likely take more than the 6 minutes indicated by the GPS tracking evidence.

18. Further, Sprout provided a screenshot, taken from what I infer is its customer management system, of its job description for Mr. Williams on April 4, 2018. The screenshot says the "spring package + power rake" was completed that day. Sprout did not explain why it shows that the power raking was completed on April 4 rather than April 13, or why there is no April 13 visit recorded in its system. Sprout also did not provide any GPS evidence of an April 13, 2018 visit to Mr. Williams' house.
19. Given all the evidence, I find that Sprout did not power rake Mr. Williams' lawn on April 4, 2018, as suggested by Sprout's customer management system screenshot. Therefore, I find the screenshot is not reliable evidence of the services Sprout allegedly completed for Mr. Williams, and I place no weight on it.
20. While I find from the Sprout GPS coordinates provided, that a technician likely attended Mr. Williams' home on April 4, 2018, I find the evidence before me is insufficient to prove what service was completed that day, if any. Further, I find there is insufficient evidence to prove that Sprout attended Mr. Williams' home on April 13, as claimed, or that Sprout applied moss spray or power raked his lawn at any time. Sprout did not provide statements from the technicians it says did the work or the managers it says inspected Mr. Williams' lawn. I also find the April 20, 2018 photos submitted of Mr. Williams' lawn are inconclusive in showing whether Sprout performed the alleged services in the preceding weeks, as claimed.
21. On balance, I find that Sprout has failed to meet its burden of proving that it provided the claimed services. Further, Sprout did not provide a copy of its invoice setting out what it charged Mr. Williams or how it arrived at its claimed \$124.95. There is no service agreement before me, nor any service price list, and Sprout has provided no evidence that Mr. Williams agreed to any contractual rate of interest. Therefore, even if Sprout had proved it completed the claimed services, I would have found that it failed to prove its damages claim.

22. I find that Sprout has not proven that Mr. Williams owes it the claimed \$124.95 or any contractual interest, and I dismiss its claims.

23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicant was unsuccessful and so I dismiss its claim for CRT fees. Mr. Williams did not pay any fees and neither party claimed any dispute-related expenses, so I make no order.

## **ORDER**

24. I dismiss the applicant's claims and this dispute.

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Kristin Gardner, Tribunal Member